



POLICE DEPARTMENT

November 21, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-24688
Sergeant Gabriel Oliveras	:	
Tax Registry No. 928892	:	
Counterterrorism Division	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCES:

For the Department: Anna Krutaya, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Matthew Schieffer, Esq.
The Quinn Law Firm
399 Knollwood Road, Suite 220
White Plains, NY 10603

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Sergeant Gabriel Oliveras, while off duty and assigned to the Counterterrorism Division, on or about and between January 14, 2022 and January 21, 2022, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant engaged in a physical altercation with a person known to the Department, causing injury.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Said Sergeant Gabriel Oliveras, while off duty and assigned to the Counterterrorism Division, on or about March 16, 2022, made misleading statements regarding hearing his wife's accusation of Domestic Violence during her arrest. (*As amended*)

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 30, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Alex Baran and Police Officer Gregory Gingo as witnesses, and submitted the recorded interviews of EMTs Britney Delmestro and Marianna Ciarcina. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the tribunal finds Respondent Not Guilty.

ANALYSIS

This case involves an alleged physical altercation between Respondent and his wife ("Complainant"). It is undisputed that this allegation came to the attention of the Department after Complainant was involved in a vehicular accident and was arrested on suspicion of DWI during the early morning hours of January 22, 2022. At issue is whether Respondent engaged in

a physical altercation with his wife prior to that date and whether he heard her make allegations against him at the scene of the accident.

Specification 1: Physical Altercation

It is undisputed that at 0215 hours on January 22, 2022, Officer Gregory Gingo responded to a radio call for a motor vehicle accident involving an intoxicated female. When the officers arrived, Complainant was sitting alone in her vehicle behind the steering wheel. Complainant called Respondent when she was with the officers. The couple lived up the block from the location of the accident. The ensuing interactions were recorded on the responding officers' Body-Worn Cameras. (Tr. 58, 75; Dept. Ex. 1.1 at 02:16:34)

Shortly thereafter, the officers removed Complainant from the car and repeatedly requested that she take a breathalyzer test. She was warned that a refusal could result in the suspension of her driver's license and an arrest. Complainant emphatically refused multiple times saying, "I'm not gonna take it. I never blow." As Respondent walked up to the car from their home, he warned, "Don't blow." (Dept. Ex. 1.1 at 02:18:08; Tr. 30) Complainant was then placed under arrest and the officers attempted to handcuff her and transport her in the RMP. Officer Gingo then informed Respondent that Complainant backed into another car and the owner of the vehicle called the police. (Dept. Ex. 1.1 at 02:20:20)

Body-worn camera footage documented Complainant's reaction to the arrest. While being placed in the patrol car, she became uncooperative and aggressive toward the officers. Complainant began screaming and crying while repeatedly yelling, "why," "get off," "no" and "don't touch me." Respondent approached but was unsuccessful in his attempts to calm her down. During her frenetic outburst, Complainant screamed at Respondent: "[You] sit there and do nothing;" "Why, you fucking piece of shit;" and "...the other night you fucking hit on me in

the face.” (Dept. Ex. 1.1 at 02:21:58) Respondent is told by officers to move away. He is seen distancing himself from the patrol car and eventually leaves the scene.

As she was being transported, Complainant became further enraged as she repeatedly shrieked and kicked the RMP. While screaming, she repeated her accusation that Respondent hit her face, caused her to bruise, and then begged her not to report it. She also claimed to have pictures of the injuries he allegedly caused. (Dept. Ex. 1.1 at 2:24:00;¹ 02:25:40) Her distress increased as she continued to screech:

“Why is he doing this to me?... [I can] lose my job.”
“Why did I fucking get arrested, why did I get arrested.”
“He took all my shit away from me.”
“I could have had him last week.”
“He just watched me get arrested. He’s a fucking sergeant.”
(Dept. Ex. 1.1 at 02:26:40)

The officers explained that Respondent could not interfere with her arrest and asked her to calm down. She replied, “I can’t.” (Dept. Ex. 1.1 at 02:26:05) Complainant became so belligerent during transport that the officers decided it was best to pull over and call an ambulance to seek medical attention for Complainant. (Tr. 65)

Recorded statements from the responding EMTs, Britney Delmestro and Marianna Ciarcina were entered into evidence. The interviews were conducted by Lieutenant Baran, the Commanding Officer of the Counterterrorism Bureau of Investigations Unit, on May 26, 2022. Both EMT Delmestro and EMT Ciarcina recalled that Complainant had a bruise on her face, but determined that based on its coloration, it was several days old. Both EMTs also stated that Complainant alleged that Respondent “hit” and “beat her.” (Dept. Ex. 2A at 2 & Dept. Ex. 3A at 3-4, 7) Complainant also told them that Respondent was actually driving the vehicle that night

¹ Officer Gingo testified he did not see the bruise until they arrived at the hospital, as it was covered by makeup. (Tr. 65)

and was responsible for the accident. Complainant added that prior to the police response, he exited the vehicle and placed her in the driver's seat. (Dept. Ex. 2A at 5-6 & Dept. Ex. 3A at 7-8) A photograph was taken by Officer Gingo documenting a bruise on Complainant's cheek. (Dept. Ex. 4; Tr. 67-68)

At trial, Respondent denied engaging in any physical altercation with his wife. He explained that he had "stepped out" from his marriage in early 2022 and that he and Complainant had discussed his infidelity at dinner prior to the accident. According to his testimony, after arguing at home, he fell asleep. Respondent testified that he only awoke when Complainant called to say that she was with the police a block from their home. When he arrived at the accident scene, he immediately advised her not to take the breathalyzer test. (Tr. 74-76) When asked at trial why he advised his wife not to cooperate with the officers, he stated he was acting as her husband, not as a police sergeant (Tr. 86-87).

The Department bears the burden of proving by a preponderance of the credible evidence that during the days preceding January 21, 2022, Respondent engaged in a physical altercation that caused injuries to his wife. For the reasons set forth below, I find that there is insufficient evidence to support the domestic violence allegation.

In a hearsay case of this nature, particular attention must be paid to the evidence. This tribunal has held many times that while hearsay is admissible in administrative proceedings, and may be the sole basis for a finding of fact, it must be carefully evaluated before it is relied upon. The more important the evidence is to the case, the more critically it should be assessed. *See Disciplinary Case No. 2018-19483* (Apr. 29, 2021); *Disciplinary Case No. 2018-19866* (June 26, 2020), citing *Police Department v. Acosta*, OATH Index No. 464/00 (Jan. 7, 2000). Where, as here, the statements of a hearsay declarant are outcome-dispositive, and there is some question as

to the declarant's reliability, "this tribunal has been loath to place much stock in those statements because they have not withstood the test of cross-examination." *Police Department v. Lowe*, OATH Index No. 892/91 (June 3, 1991), citing *Transit Authority v. Maloney*, OATH Index No. 500/91 (Apr. 19, 1991), *aff'd sub nom. Maloney v. Suardy*, 202 A.D.2d 297 (1st Dept. 1994).

Here, the body-worn camera footage raises serious questions about the reliability of Complainant's repeated hearsay assertion that Respondent struck her face. It is irrefutable that at the scene of the accident, and later in the RMP, Complainant was not only visibly intoxicated, she also exhibited signs of extreme emotional distress. As she resisted arrest on suspicion of drunk driving, Complainant became visibly unhinged: crying, using profanity, kicking, and repeatedly asking the officers, "Why, why, why"? Her piercing screams were chilling as the officers attempted to calm her down and answer her concerns. Complainant's reaction was so extreme that this tribunal questioned whether she was well connected to reality at that time.

Unfortunately, although subpoenaed, Complainant did not appear at trial to testify about her accusations. Thus, her demeanor, credibility and possible motives for fabrication could not be properly evaluated. Without the benefit of sworn testimony and cross-examination, this tribunal could not rely on Complainant's inebriated description of events as related to this tribunal through hearsay evidence. Thus, given convincing evidence suggesting that her ability to tell the truth may have been seriously impaired at the time, I find that her statements, in and of themselves, constitute an insufficient basis on which to sustain the charge against Respondent.²

The probative value of Complainant's hearsay statements was also diminished by inaccurate statements which revealed a motivation to testify falsely. Throughout this incident,

² In making this finding I acknowledge that there was some corroboration supporting Complainant's hearsay statements. A picture of Complainant's bruised face was entered into evidence, the EMTs determined that the injury was caused prior to the accident, and Complainant repeated her allegations against Respondent after she had calmed down a bit. On balance, however, this evidence did not outweigh Complainant's conclusory claims and impairment at the time she made the allegations.

Complainant was clearly angry that Respondent did not intervene on her behalf and that he was responsible for her arrest. Complainant became infuriated at Respondent when he failed to stop her arrest, yelling, “[you] just sit there and watch me be arrested.” While being transported in the RMP she complained to the officers that, “He just watched me get arrested. He’s a fucking sergeant.” As the arresting officer explained that Respondent could not intervene, she frenetically lashed out at the officers.

Even more concerning was Complainant’s statement to the EMTs that Respondent framed her that evening. In their Department interviews, both EMTs recalled Complainant stating that Respondent was the driver that evening and that he “jumped out of the car” after the accident, had her get into the driver’s seat, and then called the police. (Dept. Exs. 2A, 3A) Not only does this unfounded claim find no support in the record, it contradicts Officer Gingo’s assertion that Complainant had hit another vehicle and that vehicle’s owner had “called for an intoxic female striking their car,” and also provides a motive for Complainant to retaliate against Respondent by blaming him for her injury. Without testimony at trial clarifying this point, these emotional hearsay assertions cannot be accorded significant probative weight. In sum, this record is devoid of reliable corroboration for the unsworn allegations made by Complainant. Accordingly, I find Respondent not guilty of Specification 1.

Specification 2: Misleading Statement

The Department contends that Respondent made misleading statements during his Department interview when he answered that he did not hear Complainant’s allegation that he struck her and when he initially denied that he observed bruising on Complainant’s face.

According to Department Guidelines, a misleading statement is defined as “a statement that is intended to misdirect the fact finder, and materially alter the narrative by:

- a. Intentionally omitting a material fact³ or facts,
 - b. Making repeated claims of “I do not remember” or “I do not know” when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or
 - c. Altering and/or changing a member’s prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described, will generally be considered a misleading statement.
- (A.G. 304-10, Page 1)

At his March 16, 2022 Department interview, Respondent was asked whether he heard Complainant make any accusations against him on the night in question. He answered “No.” He further explained “I really don’t remember hearing anything that night. I remember paying attention to the police officer.” (Dept. Ex. 5A at 13) When questioned at trial whether he heard Complainant allege that he had hit her, he again stated, “I did not.” (Tr. 77). He was also asked at the interview whether he had observed bruising on his wife’s face “before or after” the accident. After responding “No,” he was shown a photo of her face taken after the accident, Respondent acknowledged that he did see a bruise. He offered at trial that he had “misunderstood” the interviewer’s compound question. (Dept. Ex. 5A at 20; Tr. 94-96)

After reviewing the record in its entirety, as well as applicable precedent, this tribunal finds insufficient evidence to support a finding that Respondent was attempting to misdirect the questioner by denying that he did not hear his wife’s accusation at the scene. As Respondent explained at trial, the accident scene was very chaotic and loud. His wife was screaming and exhibiting signs of distress. (Tr. 77) Respondent consistently stated in his trial testimony and in

³ A material fact is a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail.

his Department interview that he was focusing on what the officers were saying to him at the time his wife made the accusation. This is a plausible explanation—a Member of the Service arriving at the scene of his wife’s arrest would obviously be under a certain amount of stress and his focus might shift back and forth from his wife’s shouting to the on-duty officers who were directing the scene. Despite Respondent having a strong interest in the outcome of this case, the tribunal found his statement that he did not hear a specific comment made by Complainant, as she spewed a litany of other agitated comments, to be wholly reasonable under the circumstances.⁴

This tribunal also finds insufficient evidence to support a finding that Respondent made a misleading statement when he answered “no” when asked whether he saw bruising on Complainant’s face “before or after” the accident. The question, as asked, was a compound question. Respondent explained that he was confused by the question and originally answered it, in part. Respondent clarified his answer, both during his Department interview and again at trial, by asserting that although he did not see a bruise before the accident, he did see it after. In sum, he clarified his answer when given an opportunity to do so, as is his right. Accordingly, I find Respondent not guilty of Specification 2.

APPROVED
JUL 12 2023
Edward A. Caban
EDWARD A. CABAN
ACTING POLICE COMMISSIONER

Respectfully submitted,

R. Maldonado
Rosemarie Maldonado
Deputy Commissioner Trials

⁴ The testimony elicited on whether Respondent was five to ten feet away from Complainant at the time she made the statement were not dispositive in this case.